

**Classification**

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action reduces the trip limit for herring in Area 1A to 2,000 lb (907.2 kg) until January 1, 2011, under current regulations. Regulations at § 648.201(a) require such an action to ensure that herring catch does not exceed the 2010 Area 1A TAC. The herring fishery opened for the 2010 fishing year at 0001 hours on January 1, 2010. Data indicating the herring fleet will have harvested at least 95 percent of the 2010 Management Area 1A TAC have only recently become available. If implementation of this trip limit reduction is delayed to solicit prior public comment, the 2010 TAC for the management area will be exceeded, thereby undermining the conservation objectives of the herring fishery management plan. The AA further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30 day delayed effectiveness period for the reasons stated above.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: November 4, 2010.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2010-28321 Filed 11-5-10; 8:45 am]

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 665**

[Docket No. 100618274-0543-03]

**RIN 0648-AY92**

**Fisheries in the Western Pacific; Hawaii Bottomfish and Seamount Groundfish; Measures To Rebuild Overfished Armorhead at Hancock Seamounts**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule prohibits fishing for bottomfish and seamount groundfish at the Hancock Seamounts

until the overfished U.S. stock of pelagic armorhead (*Pseudopentaceros wheeleri*) is rebuilt, and classifies the area around the Hancock Seamounts as an ecosystem management area. This rule is intended to rebuild the armorhead stock and facilitate research on armorhead and other seamount groundfish.

**DATES:** This rule is effective December 10, 2010.

**ADDRESSES:** Amendment 2 to the Fishery Ecosystem Plan for the Hawaiian Archipelago (FEP) describes the background and details of this action. Amendment 2 also contains an environmental assessment and is available from <http://www.regulations.gov>, or the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, or <http://www.wpcouncil.org>.

**FOR FURTHER INFORMATION CONTACT:**

Jarad Makaiau, Sustainable Fisheries, NMFS Pacific Islands Region, 808-944-2108.

**SUPPLEMENTARY INFORMATION:**

Armorhead are overfished because of over-exploitation by foreign vessels in international waters dating back to the 1980s, and probably earlier. Although there has never been a U.S. fishery targeting this fish, continued exploitation outside the U.S. Exclusive Economic Zone (EEZ) by foreign fleets has kept the stock in an overfished condition. The Hancock Seamounts are the only known armorhead habitat within the EEZ. These seamounts lie west of 180 °W. and north of 28 °N. in the Northwestern Hawaiian Islands.

The Council and NMFS previously responded to the overfished condition of armorhead with a series of four, 6-year domestic fishing moratoria at the Hancock Seamounts, beginning in 1986. The most recent 6-year moratorium expired on August 31, 2010. This final rule prohibits fishing for bottomfish and seamount groundfish at the seamounts until the armorhead stock is rebuilt, and classifies the EEZ around the Hancock Seamounts as an ecosystem management area. This final rule will aid in rebuilding the armorhead stock, and will facilitate research on armorhead and other seamount groundfish.

Additional background information on this final rule is found in the preamble to the proposed rule published on August 30, 2010 (75 FR 52921), and is not repeated here. The public comment period for the proposed rule ended on October 14, 2010. NMFS did not receive any comments.

**Changes From the Proposed Rule**

There no changes from the proposed rule.

**Classification**

The Regional Administrator, Pacific Islands Region, NMFS, determined that this final rule is necessary for the conservation and management of Hawaii seamount and groundfish fisheries, and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a substantial economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required, and none was prepared.

**List of Subjects in 50 CFR Part 665**

Armorhead, Bottomfish, Fisheries, Fishing, Hancock seamounts, Hawaii, Seamount groundfish.

Dated: November 4, 2010.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 665 is amended as follows:

**PART 665—FISHERIES IN THE WESTERN PACIFIC**

■ 1. The authority citation for part 665 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

■ 2. In § 665.202, revise paragraph (a)(3) to read as follows:

**§ 665.202 Management subareas.**

(a) \* \* \*

(3) Hancock Seamounts Ecosystem Management Area means that portion of the EEZ in the Northwestern Hawaiian Islands west of 180 °W. long. and north of 28 °N. lat.

\* \* \* \* \*

■ 3. In § 665.204, add new paragraph (k) to read as follows:

**§ 665.204 Prohibitions.**

\* \* \* \* \*

(k) Fish for or possess any Hawaii bottomfish or seamount groundfish MUS in the Hancock Seamounts Ecosystem Management Area, in violation of § 665.209.

■ 4. Revise § 665.209 to read as follows:

**§ 665.209 Fishing moratorium at Hancock Seamounts.**

Fishing for, and possession of, Hawaii bottomfish and seamount groundfish MUS in the Hancock Seamounts Ecosystem Management Area is prohibited until the Regional Administrator determines that the armorhead stock is rebuilt.

[FR Doc. 2010-28413 Filed 11-9-10; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 080228322-91377-02]

RIN 0648-AW24

**Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Observer Program**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to amend regulations implementing the North Pacific Groundfish Observer Program (Observer Program). This action is necessary to improve the operational efficiency of the Observer Program, as well as to improve the catch, bycatch, and biological data collected by observers for conservation and management of the North Pacific groundfish fisheries, including those data collected through scientific research activities. The final rule is intended to promote the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska.

**DATES:** Effective December 10, 2010, except the revision to the definition of a fishing day in § 679.2, which is effective on January 1, 2011.

**ADDRESSES:** Electronic copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this action may be obtained from the NMFS Alaska Region Web site at <http://>

[alaskafisheries.noaa.gov](http://alaskafisheries.noaa.gov). Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Brandee Gerke, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

**Background**

NMFS manages the U.S. groundfish fisheries in the Exclusive Economic Zone of the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA) under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (collectively, the FMPs), respectively. The North Pacific Fishery Management Council (Council) prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

The Observer Program provides the administrative framework for observers to obtain information necessary for the conservation and management of the groundfish fisheries managed under the FMPs. Regulations implementing the Groundfish Observer Program at § 679.50 require observer coverage aboard catcher vessels, catcher/processors, motherships, and shoreside and stationary floating processors that participate in the groundfish fisheries off Alaska. These regulations also establish vessel, processor, and observer provider responsibilities relating to the Observer Program.

This final rule amends regulations at § 679.2 and § 679.50 applicable to observer providers, observers, and industry participants required to obtain observer services. The regulatory amendments are organized under six issues and will remove regulations that are either unnecessary or impractical to apply; revise regulations to allow observer providers to provide observers for exempted fishing permit-based and scientific research permit-based activities; add regulations to prohibit activities that result in non-

representative fishing behavior from counting toward an observer coverage day; require observer providers to report to NMFS information about the cost of providing observers; and establish a deadline when observer providers must submit copies of their contracts to NMFS, per the Council's April 2008 motion. This action is necessary to improve the operational efficiency of the existing Observer Program, as well as improve the catch, bycatch, and biological data provided by observers for conservation and management of the North Pacific groundfish fisheries, including data provided through scientific research activities.

A detailed description of and justification for this final rule was presented in the preamble to the proposed rule (74 FR 50155, September 30, 2009). A summary of the final rule is presented below.

*Issue 1: Observer Certification and Observer Provider Permitting Process*

This final rule clarifies NMFS's discretionary authority to either grant or deny an initial observer certification or observer provider permit by allowing NMFS to consider additional needs and objectives of the Observer Program and other relevant factors when considering whether to issue a new observer provider permit or observer certification. In addition, the appeal process for unsuccessful observer candidates and observer provider applicants is removed from regulations. There is no statutory entitlement to receiving observer certification or an observer provider permit; thus, the granting or denial of observer certifications and observer provider permits are discretionary agency actions. In addition, the existing appeals process has rarely been invoked and requires substantial agency resources to fulfill. These actions will increase NMFS's efficiency in granting or denying certifications and permits. NMFS reiterates that this action does not affect the ability of observers and observer providers to appeal any agency decision to revoke or sanction a certification or permit that already is issued.

*Issue 2: Observer Conduct*

This final rule removes Federal regulations that attempt to control observer behavior related to activities involving drugs, alcohol, and sexual conduct. NMFS's observer conduct policies established in existing regulations are impractical to apply and unenforceable. Therefore, NMFS is removing these regulations.